

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**CIVIL ACTION NO. 03-30298 - MAP**

**JAMES TULGAN,**

**Plaintiff**

**V**

**BERKSHIRE ARMORED CAR,  
SERVICES CO., INC. PROFIT SHARING  
PLAN, BERKSHIRE ARMORED CAR  
SERVICES CO., INC., GERARD S.  
REDER AND JACQUELINE POWERS,  
Defendants**

**DEFENDANT  
JACQUELINE POWERS'  
ANSWER AND  
DEMAND FOR JURY TRIAL**

NOW comes the Defendant, Jacqueline Powers' (hereinafter referred to as the "Powers") in the above entitled matter and submits her Answer and Demand For Jury Trial To the Complaint of James Tulgan (hereinafter referred to as "Tulgan"):

1. Defendant Powers is without information sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 1 of the Complaint.
2. Defendant Powers is without information sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 2 of the Complaint.
3. Defendant Powers is without information sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 3 of the Complaint.
4. Defendant Powers is without information sufficient to form a belief as to the truth or veracity of the allegations contained in Paragraph 4 of the Complaint.
5. Defendant Powers denies the allegations contained in Paragraph 5 of the Complaint.
6. Defendant Powers denies the allegations contained in Paragraph 6 of the Complaint.

7. Defendant Powers denies the allegations contained in Paragraph 7 of the Complaint.
8. Defendant Powers denies the allegations contained in Paragraph 8 of the Complaint.
9. No Answer required.
10. Defendant Powers denies the allegations contained in Paragraph 10 of the Complaint.
11. No Answer required.
12. Defendant Powers denies the allegations contained in Paragraph 12 of the Complaint.
13. No Answer required.
14. Defendant Powers denies the allegations contained in Paragraph 14 of the Complaint.
15. No Answer required.
16. Defendant Powers denies the allegations contained in Paragraph 16 of the Complaint.

WHEREFORE, Defendant, Jacqueline Powers demands that the Complaint be dismissed, and for there to be an order awarded it for attorney's fees, interest and costs.

#### **SECOND DEFENSE**

The Plaintiff has failed to state a claim upon which relief may be granted.

#### **THIRD DEFENSE**

The Plaintiff has failed to bring his action against the Defendants within the applicable Federal and State Statute of limitations.

#### **FOURTH DEFENSE**

The Plaintiff waived all actions including those described in its Complaint against the Defendants.

#### **FIFTH DEFENSE**

The Defendants have paid all monies due and owing the Plaintiff that were required by Federal or Massachusetts law including, but not limited to, those required under the Plaintiff's pension plan.

#### **SIXTH DEFENSE**

Any obligations of the Defendants to the Plaintiff on account of the Plaintiff's employment and/or pension plan have been satisfied.

#### **SEVENTH DEFENSE**

The Plaintiff's rights and/or benefits in the Berkshire Profit Sharing Plan had not vested; therefore, the Plaintiff obtained no rights and remedies under ERISA or other Federal or State law.

#### **EIGHTH DEFENSE**

The Plaintiff forfeited whatever and/or remedies he obtained under ERISA or any other applicable Federal or State law.

#### **NINTH DEFENSE**

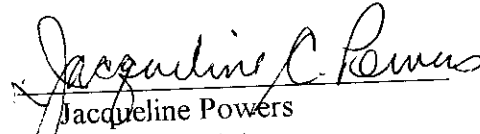
Plaintiff's action against the Defendants is preempted by Massachusetts law; therefore, Plaintiff's action should be dismissed.

#### **TENTH DEFENSE**

The Plaintiff voluntarily quit from his employment with Berkshire Armored Car Services Co., Inc., for a period in excess of one (1) year, when his benefits were not vested; therefore, the Plaintiff lost whatever credit he arguably obtained prior to his rehire. Accordingly, Plaintiff's benefits with the plan were not vested.

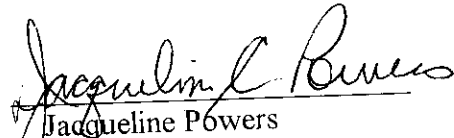
**The Defendant Jacqueline Powers demands a trial by jury in all issues herein.**

Dated: January 6, 2004

  
Jacqueline Powers  
60 Kenwood Avenue  
Pittsfield, MA 01201  
(413) 448-2017

**CERTIFICATE OF SERVICE**

I, Jacqueline Powers hereby certify that I have on this 6<sup>th</sup> day of January, 2004, served the within Defendant Jacqueline's Answer and Demand For Jury Trial, by mailing same to Robert L. Leonard, Esq., Doherty Wallace Pillsbury and Murphy, One Monarch Place, Suite 1900, Springfield, MA 01144 , by first class mail, postage prepaid.

  
Jacqueline Powers